

## APPROVAL OF CONSENT AGENDA

**TOWN OF DAVIE  
TOWN COUNCIL AGENDA REPORT**

**TO:** Mayor and Councilmembers

**FROM/PHONE:** Giovanni Moss, Director, Housing and Community Development, 954-797-1226

**PREPARED BY:** Burton Spiwak, Programs Specialist, Housing and Community Development

**SUBJECT:** Resolution authorizing the Mayor to execute a Service Provider Agreement with Fred Fox Enterprises, Inc.

**AFFECTED DISTRICT:** Town Wide

**ITEM REQUEST:** **Schedule for Council Meeting**

**TITLE OF AGENDA ITEM:** AGREEMENT - A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A SERVICE PROVIDER AGREEMENT WITH FRED FOX ENTERPRISES, INC. IN THE AMOUNT OF \$98,000 TO ASSIST WITH THE ADMINISTRATION OF THE TOWN'S NEIGHBORHOOD STABILIZATION PROGRAM (NSP) AND TO ACT AS A CONSULTANT WITH THE ADMINISTRATION OF ALL OTHER ACTIVITIES RELATED TO THE SUCCESSFUL COMPLETION OF THE NSP PROGRAM AND PROVIDING FOR AN EFFECTIVE DATE.

**REPORT IN BRIEF:** On April 1, 2009, the Town Council approved Resolution R-2009-71 authorizing the Mayor to execute and submit an Application in the amount of \$2,316,292 and Housing Assistance Plan to the State Department of Community Affairs (DCA) for the Neighborhood Stabilization Program. On April 23, 2009, an advertisement requesting proposals for an NSP Administrative Services Provider was published in the Sun-Sentinel Newspaper and on May 14, 2009 six (6) proposals were received by the Town. The budget amendment was approved by Ordinance 2009-13 on May 20, 2009, which approved the funding for the NSP Program. On June 2, 2009, the Town's Bid Spec Committee selected Fred Fox Enterprises, Inc. to provide Administrative Services from the six proposals received. By Resolution No. R-2009-153, approved on June 17, 2009, the Town Council authorized the Town Administrator or his designee to negotiate an agreement with Fred Fox Enterprises, Inc. An agreement has been negotiated between the Town of Davie and Fred Fox Enterprises, Inc. in the amount of \$98,000 to provide administrative services.

**PREVIOUS ACTIONS:** Resolution R-2009-71 approved on April 1, 2009 authorizing the Mayor to execute an Application and Housing Assistance Plan requesting \$2,316,292 in NSP funds; Ordinance 2009-13, approved on May 20, 2009 approved the budget amendment providing the funding for the NSP Program; Resolution R-2009-153, approved June 17, 2009 authorized the

Town Administrator or his designee to negotiate an agreement between the Town and Fred Fox Enterprises, Inc.

**CONCURRENCES:**

**FISCAL IMPACT:** Yes

Has request been budgeted? Yes

If yes, expected cost: \$98,000 in NSP funds

**RECOMMENDATION(S):** Motion to approve resolution

**Attachment(s):** Resolution, Administrative Services Agreement

RESOLUTION \_\_\_\_\_

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A SERVICE PROVIDER AGREEMENT WITH FRED FOX ENTERPRISES, INC. IN THE AMOUNT OF \$98,000 TO ASSIST WITH THE ADMINISTRATION OF THE TOWN'S NEIGHBORHOOD STABILIZATION PROGRAM (NSP) AND TO ACT AS A CONSULTANT WITH THE ADMINISTRATION OF ALL OTHER ACTIVITIES RELATED TO THE SUCCESSFUL COMPLETION OF THE NSP PROGRAM AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, on April 1, 2009, by Resolution No. R-2009-71, the Davie Town Council authorized the Mayor to execute and submit an Application in the amount of \$2,316,292 and Housing Assistance Plan to the State Department of Community Affairs (DCA) for the Neighborhood Stabilization Program; and

WHEREAS, on April 23, 2009, an advertisement requesting proposals for an NSP Administrative Services provider was published in the Sun-Sentinel Newspaper; and

WHEREAS, on May 14, 2009, six (6) proposals for Administrative Services were received by the Town of Davie; and

WHEREAS, on May 20, 2009, the Town Council approved a budget amendment by Ordinance 2009-13 which provided funding under the NSP Program; and

WHEREAS, on June 2, 2009, the Town's Bid Spec Committee selected Fred Fox Enterprises, Inc. to provide Administrative Services from the six (6) proposals submitted; and

WHEREAS, on June 17, 2009, by Resolution No. R-2009-153, the Town Council approved the selection of Fred Fox Enterprises, Inc. to provide Administrative Services

under the NSP Program and authorized the Town Administrator or his designee to negotiate an agreement; and

WHEREAS, an agreement between the Town and Fred Fox Enterprises, Inc. has been negotiated and the Town of Davie believes that such an agreement at a total fee of \$98,000 will be beneficial to all parties and will result in great benefit to the residents of the Town of Davie; and

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Mayor or her designee is hereby authorized to execute the Agreement between the Town of Davie and Fred Fox Enterprises, Inc. to administer the Town's Neighborhood Stabilization Program at a total cost of \$98,000.

SECTION 2. This Resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2009

\_\_\_\_\_

MAYOR/COUNCILMEMBER

ATTEST:

\_\_\_\_\_  
TOWN CLERK

APPROVED THIS \_\_\_\_ DAY OF \_\_\_\_\_, 2009

**AGREEMENT**

**between**

**TOWN OF DAVIE**

**and**

**FRED FOX ENTERPRISES, INCORPORATED**

**for**

**ADMINISTRATIVE SERVICES**

**COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)**

**NEIGHBORHOOD STABILIZATION PROGRAM (NSP)**

**IN THE AMOUNT \$98,000**

**AGREEMENT**  
**between**  
**TOWN OF DAVIE**  
**and**  
**FRED FOX ENTERPRISES, INCORPORATED**  
**for**  
**ADMINISTRATIVE SERVICES**  
**COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)**  
**NEIGHBORHOOD STABILIZATION PROGRAM (NSP)**  
**IN THE AMOUNT \$98,000**

This Agreement is entered into by and between the TOWN OF DAVIE ("TOWN"), a municipal corporation of the State of Florida, and FRED FOX ENTERPRISES, INCORPORATED ("CONSULTANT"), a for-profit organization.

WITNESSETH, that, for and in consideration of the mutual terms and conditions, promises, covenants and payments, the Parties agree as follows:

NOW THEREFORE, the parties hereto agree as follows:

**ARTICLE 1: SCOPE OF THE SERVICES OF THE CONSULTANT**

The CONSULTANT shall provide the services as detailed in Exhibit "A".

**ARTICLE 2: TOWN'S RESPONSIBILITY**

The TOWN'S responsibility in regard to this contract is detailed in Exhibit "A".

### **ARTICLE 3: TERM OF AGREEMENT AND PERIOD OF PERFORMANCE**

This Agreement shall commence upon full execution by both Parties and shall end at the grant close-out, unless terminated earlier as provided for herein. Notwithstanding, any extension for completion as provided and agreed to by the Department of Community Affairs shall also extend to this agreement with the CONSULTANT.

### **ARTICLE 4: COMPENSATION**

- 4.1 The TOWN agrees to pay, from the funding set forth in Article Sixteen (16) herein, CONSULTANT the total sum of Ninety Eight Thousand and 00/100 Dollars (\$98,000.00), distributed as Twenty-Four (24) equal monthly payments of Three Thousand six hundred seventy-five and 00/100 Dollars (\$3,675.00).
- 4.2 If an extension of the grant is requested and approved by The Florida Department of Community Affairs, the monthly payment will be reduced accordingly to correspond with the remaining portion of the contract. The balance of Nine Thousand Eight Hundred and 00/100 Dollars (\$9,800.00) will be paid upon the issuance of a "Notice of Administrative Closeout" for the project by the Florida Department of Community Affairs.
- 4.3 At the end of the twelfth month of this contract, the TOWN and the CONSULTANT shall review the progress of the project to determine if the project is proceeding on schedule. If the project is determined not to be progressing on schedule, a revised payment schedule shall be developed that is acceptable to both parties.
- 4.4 If the grant contract obligations are met and the grant closes out prior to the twenty-four month ending date, CONSULTANT can be paid the sum remaining in the contract upon issuance of a "Notice of Administrative Closeout" for the project by the Florida Department of Community Affairs.
- 4.5 All requests for payment shall be submitted by CONSULTANT in detail sufficient for a proper pre-audit and post-audit review.
- 4.6 TOWN shall have the right to suspend payments in the event of knowing and irreversible ineligible use of Neighborhood Stabilization Program funds and/or submission of incorrect, incomplete or fraudulent reports in any material respect.

- 4.7 No payments shall be made to the CONSULTANT if the CDBG-NSP grant is not awarded to the TOWN.

## **ARTICLE 5: CITIZEN PARTICIPATION**

- 5.1 It is understood between the parties that both the TOWN and the CONSULTANT shall encourage continuous participation in the Project by the citizens of the area. It is further understood that both the TOWN and the CONSULTANT shall be responsible for adequate advertising of the Project. It is understood that funds for such advertising shall be paid from grant funds.

## **ARTICLE 6 - ASSURANCE**

- 6.1 CONSULTANT agrees to comply with all applicable Federal, State, County and TOWN laws, ordinances, and codes and regulations, including but not limited to 24 CFR 24 Part 570, as may be amended from time to time. Any conflict or inconsistency between the above Federal, State, County or TOWN laws, ordinances, codes and/or regulations, this Agreement shall be resolved in favor of the more restrictive laws, ordinances, codes or regulations.
- 6.2 CONSULTANT agrees to act in accordance with Title VI of the Civil Rights Act of 1964 (P.L. 88-352), which states that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which SUB-RECIPIENT receives State financial assistance and will immediately take any measures necessary to effectuate this Agreement.
- 6.3 CONSULTANT agrees, if applicable, to inform affected persons of the benefits, policies, and procedures provided for under CDBG regulations.
- 6.4 CONSULTANT agrees to establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business or other ties.
- 6.5 CONSULTANT agrees further that it shall be bound by these standard terms and conditions contained in this Agreement and such other rules, regulations or requirements as TOWN may reasonably impose, in addition to the aforementioned assurances provided at, or subsequent, to the execution of this Agreement by the Parties.
- 6.6 CONSULTANT agrees to act in accordance with Section 503 and 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of

1990 in addressing the problem of discrimination against individuals with disabilities in such areas as employment, housing, public accommodations, education, and transportation.

- 6.7 CONSULTANT shall comply with Title I and Title II of the Americans with Disabilities Act regarding nondiscrimination on the basis of disability in employment and in State and local government services, in the course of providing any services funded in whole or in part by TOWN.

## **ARTICLE 7: NOTICE AND LOCAL GOVERNMENT CONTACT PERSON**

- 7.1 The contact person who will represent the TOWN in all matters pertaining to the Project shall be Giovanni Moss, Housing and Community Development Director, whose address is 4700 SW 64<sup>th</sup> Avenue, Suite D, Davie, FL 33314 or his designee.
- 7.2 Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or by hand-delivery with a request for a written receipt of acknowledgement of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the Parties designate the following:

FOR TOWN:

Giovanni Moss, Director  
Housing and Community Development  
4700 Southwest 64<sup>th</sup> Avenue, Suite D  
Davie, Florida 33314

FOR CONSULTANT:

David Fox, Senior Project Manager  
Fred Fox Enterprises, Incorporated  
26 Spanish Street  
St. Augustine, Florida 32084

## **ARTICLE 8: EXCLUSIVE REPRESENTATION**

- 8.1 It is understood between the parties that a representative of the TOWN and a representative of the CONSULTANT, will represent this Project before any and all DCA or HUD meetings.

## **ARTICLE 9: CONFLICT OF INTEREST**

- 9.1 The TOWN, having been so advised by the CONSULTANT, does hereby recognize that the CONSULTANT has provided similar area services in the past to local governments and to area governmental bodies and may be so engaged in similar projects at this time or in the future, and the parties agree that administration of these projects by the CONSULTANT do not constitute a conflict of interest with the Project.
- 9.2 CONSULTANT covenants that no person who presently exercises any functions or responsibilities in connection with the Agreement or any individual has any personal financial interest, and for one (1) year following Project completion or Agreement's term, whichever is later. Any possible conflicting interest on the part of the CONSULTANT, its employees, or agents, shall be disclosed in writing to TOWN.
- 9.3 Neither CONSULTANT, nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with CONSULTANT'S, loyal and conscientious exercise of judgment related to its performance under this Agreement. CONSULTANT agrees that none of its employees shall, during the term of this Agreement, serve as an adverse or hostile witness against TOWN in any legal or administrative proceeding in which he or she is not a party, unless compelled by court process, nor shall such persons give sworn testimony or issue a report or writing, as an expression of his or her opinion, which is adverse or prejudicial to the interests of TOWN in any such pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding regarding this Agreement. In the event CONSULTANT is permitted to utilize subcontractors to perform any services required by this Agreement, CONSULTANT agrees to prohibit such subcontractors, by written contract, from having any conflicts as within the meaning of this section.

## **ARTICLE 10: INDEPENDENT CONTRACTOR**

- 10.1 CONSULTANT is an independent contractor under this Agreement. Services provided CONSULTANT shall be performed by employees of CONSULTANT subject to supervision by CONSULTANT, and shall not be deemed officers, employees, or agents of TOWN. Personnel policies, tax

responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Agreement shall be those of CONSULTANT, which policies of CONSULTANT shall not conflict with TOWN or State of Florida policies, rules or regulations relating to the use of these funds provided for under this Agreement.

## **ARTICLE 11: CONTRACT AMENDMENT**

- 11.1 The terms and conditions of this contract may be changed at any time. All such changes shall be incorporated as written amendments to this contract.
- 11.2 TOWN may, in its discretion, amend this Agreement to conform to changes in Federal, State, Local, County and/or CDBG NSP guidelines, directives, and objectives. Such amendments shall be incorporated by written amendment as a part of this Agreement and shall be subject to approval of the Town Council, that change the term of the Agreement, reduce the funding, or change the Project, so long as the Project consists of eligible activities under 24 CFR Part 570. Except for the provisions as set forth herein, no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

## **ARTICLE 12: TERMINATION**

- 12.1 This contract may be terminated in whole or in part in writing by either party in the event of substantial failure by the other to fulfill its obligations under this contract, provided that no termination may be effected unless the other party is given (1) not less than ten (10) calendar days written notice (delivered by hand or by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party during said 10 day period prior to termination.
- 12.2 This contract may be terminated in whole or in part in writing by the TOWN for its convenience, provided that the other party is afforded the same notice and consultation opportunity specified in 12.1 above.
- 12.3 If termination for default is effected by the TOWN, an equitable adjustment in the price for this contract shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the CONSULTANT at the time of termination may be adjusted to cover any additional costs to the TOWN because of the CONSULTANT'S default.

- 12.4 If termination for convenience is effected by the TOWN, the equitable adjustment shall provide for payment to the CONSULTANT for services rendered and expenses incurred prior to receipt of the notice of intent to terminate, in addition to termination settlement costs reasonably incurred by the CONSULTANT relating to commitments (e.g., suppliers, subcontractors) which had become firm prior to receipt of the notice of intent to terminate, if any, and upon proper documentation submittal.
- 12.5 Upon receipt of a termination action under paragraphs (a) or (b) above, the CONSULTANT shall (1) promptly discontinue all affected work (unless the notice directs otherwise) and (2) deliver or otherwise make available to the TOWN all data, drawings, reports, specifications, summaries and other such information, as may have been accumulated by the CONSULTANT in performing this contract, whether completed or in process.
- 12.6 Upon termination, the TOWN may take over the work and award another party a contract to complete the work described in this contract.
- 12.7 If, after termination for failure of the CONSULTANT to fulfill contractual obligations, it is determined that the CONSULTANT had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of the TOWN. In such event, adjustment of the contract price shall be made as provided in paragraph 12.3 above.

### **ARTICLE 13: EQUAL OPPORTUNITY**

- 13.1 The CONSULTANT warrants that there shall be no discrimination against employees, applicants for employment, those to whom services are rendered, and applicants for such services under this contract because of race, color, age, sex, religion, national origin, place of birth, ancestry, disability, or familial status.
- 13.2 During the performance of the functions described herein, the CONSULTANT agrees to the following conditions pertaining to the recognition and protection of the civil rights of employees, applicants for employment, those to whom services are rendered, and applicants for such services:
1. The CONSULTANT will comply with the provisions of Title VI of the Civil Rights Act of 1964, P.L. 88-352, as amended, and rules and regulations published pursuant thereto, all of which are made a part hereof as if fully incorporated herein;
  2. The CONSULTANT will comply with the provisions of Presidential Executive Order Number 11246 of September 24, 1965, as amended,

Title 3, Code of Federal Regulations, Chapter 4, which is made a part hereof as if fully incorporated herein, the provisions of Section 204 of which executive order must be set forth verbatim, to wit: During the performance of this contract, the CONSULTANT agrees as follows: The CONSULTANT will not discriminate against any employee or applicant for employment because of race, color, age, sex, religion, national origin, place of birth, ancestry, disability, or familial status. Such action shall include, but not be limited to the following: employment, upgrading, demotion, transfer, recruitment, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The CONSULTANT agrees to post in conspicuous place, available to employees and applicants for employment, notice to be provided by the contracting officer setting forth the provisions of the non-discrimination clause.

3. The CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of the Town, state that all qualified applicants will receive consideration for employment without regard to race, color, age, sex, religion, national origin, place of birth, ancestry, disability, or familial status.

4. The CONSULTANT will send to each labor union or representative or workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer advising the labor union or worker's representative of the contractor's commitments under Section 204 of Executive Order Number 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5. The CONSULTANT will comply with all provisions of Executive Order Number 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

6. The CONSULTANT will furnish all information and reports required by Executive Order Number 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

7. In the event of the CONSULTANT'S non-compliance with the non-discrimination clauses of this contract or with such rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order Number 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order Number 11246, of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by

law.

8. The CONSULTANT will include the provisions of paragraphs one (1) through seven (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued to Section 204 of Executive Order Number 11246 of September 24, 1965, so that such provisions will be binding upon subcontractors or vendors. The CONSULTANT will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for non-compliance; provided however, that in the event the CONSULTANT becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the CONSULTANT may request the United States to enter into such litigation to protect the interest of the United States.

9. The CONSULTANT shall not discriminate in solicitations or advertisements for employees placed by and on behalf of the contractor or against any employee or applicant for employment because of race, color, age, sex, religion, national origin, place of birth, ancestry, disability, or familial status.

#### **ARTICLE 14: HUD/DCA AUDITS**

14.1 If HUD or DCA finds that any sums received by CONSULTANT are unreasonable, then those sums shall be refunded by CONSULTANT to TOWN as required by 24 C.F.R., Section 570.200. CONSULTANT agrees to reimburse to TOWN any funds expended for transactions approved by CONSULTANT which are disallowed by the Florida Community Development Agency (F.C.D.A.), due to the malfeasance, misfeasance, or nonfeasance of the administrator. All records will be made available to the TOWN auditors at their request as pre-audit and post-audit requirements.

#### **ARTICLE 15: REQUIREMENTS REGARDING ENGINEER OR ARCHITECT**

15.1 It is understood between TOWN and CONSULTANT that CONSULTANT will not be responsible for any Federal, State, or Local requirements that must be completed and supervised by an engineer and/or architect.

#### **ARTICLE 16: LEGAL FEES AND AUDITS FEES**

- 16.1 It is understood between the TOWN and the CONSULTANT that the Administrator will not be responsible for legal or audit costs associated with this project.

#### **ARTICLE 17: SOURCE OF FUNDING**

- 17.1 The sole source of payment for this contract is the funding received through the C.D.B.G. program and/or portion of any other funding grants leveraged from it.

#### **ARTICLE 18: REMEDIES**

- 18.1 Any controversies or legal problems arising out of this transaction and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the Seventeenth Judicial Circuit of Broward County, Florida, the venue sites, and shall be governed by the laws of the State of Florida. To encourage prompt and equitable resolution of any litigation that may arise, each Party waives any rights it may have to a trial by jury of any such litigation.

#### **ARTICLE 19: ACCESS TO RECORDS**

- 19.1 TOWN, the Florida Department of Community Affairs, the U.S. Department of Housing and Urban Development, the Comptroller General of the United States, and any of their duly authorized representatives shall have access to any books, documents, papers, and records of CONSULTANT which are directly pertinent to this contract for the purpose of making audit, examination, excerpts, and transcriptions.
- 19.2 All reports, plans, surveys, information, documents, maps and other data procedures developed, prepared, assembled, or completed by CONSULTANT, for the purposes of this Agreement shall become the property of TOWN without restriction, reservation or limitation of their use and shall be made available by CONSULTANT at any time upon request by TOWN. Upon completion of all work contemplated under this Agreement, copies of all of the above data shall be delivered to TOWN.

#### **ARTICLE 20: RETENTION OF RECORDS**

- 20.1 The CONSULTANT shall retain all records relating to this contract for six (6) years following the final closeout of the project by the Department of Community Affairs.

## **ARTICLE 21: ENVIRONMENTAL COMPLIANCE**

- 21.1 Should this contract exceed \$100,000, CONSULTANT shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act, 42 U.S.C. 1857 (h), section 508 of the Clean Water Act, 33 U.S.C. 1368, Executive Order 11738, and U.S. Environmental Protection Agency regulations, 40 C.F.R. Part 15. CONSULTANT shall include this clause in any subcontracts over \$100,000.

## **ARTICLE 22: PRIOR AGREEMENTS SUSPENDED**

- 22.1 This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to these matters; and, the Parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, it is agreed that no deviation from the terms shall be predicated upon any prior representations or agreements whether oral or written.

## **ARTICLE 23: THIRD PARTY BENEFICIARIES**

- 23.1 Neither CONSULTANT, nor TOWN intends to directly or substantially benefit a third party by this Agreement, except the Grant Recipient, who is purchasing a foreclosed property or whose property is being rehabilitated. Notwithstanding that exception, the Parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement. The Parties expressly acknowledge that it is not their intent to create any rights or obligations in any third person or entity under this Agreement, except as provided herein.

## **ARTICLE 24: ASSIGNMENT**

- 24.1 CONSULTANT shall not transfer or assign the performance of services called for in this Agreement.

## **ARTICLE 25: EXECUTION**

- 25.1 This document shall be executed in three (3) counterparts, each of which shall be deemed to be an original.

IN WITNESS WHEREOF, the TOWN OF DAVIE and FRED FOX ENTERPRISES, INCORPORATED have executed this agreement the day and year first above written.

TOWN OF DAVIE

ATTEST:

BY: \_\_\_\_\_

Mayor/Council Member

\_\_\_\_\_  
Russell Muniz, CRM, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Town Attorney

State of Florida

County of Broward

The Foregoing instrument was acknowledged before me, the undersigned Notary Public in and for the State of Florida, on this, the \_\_\_\_ day of \_\_\_\_\_, 2009 by Judy Paul, Mayor and respectively.

Notary Public, State of Florida

NOTARY PUBLIC

SEAL OF OFFICE

\_\_\_\_\_  
Printed, typed or stamped name  
of Notary Public exactly as  
commissioned

Individuals who signed are personally known: no identification produced.

ATTEST:

FRED FOX ENTERPRISES,  
INCORPORATED

\_\_\_\_\_  
Melissa Fox, Administrative Assistant

By: \_\_\_\_\_  
Fred D. Fox, President

State of Florida  
County of St Johns

On this, the \_\_\_\_ day of \_\_\_\_\_, 2009, before me, the undersigned Notary Public of State of Florida, the foregoing instrument was acknowledged by Fred D. Fox, President of Fred D. Fox Enterprises, Incorporated, a Florida corporation, on behalf of the corporation.

WITNESS my hand  
And official seal

Notary Public, State of Florida

\_\_\_\_\_  
Printed, typed or stamped name  
of Notary Public exactly as  
commissioned

Personally known to me or produced identification

SWORN STATEMENT UNDER SECTION 287.133(3)(a)  
FLORIDA STATUTES, ON PUBLIC ENTITY CRIMES

THIS FORM MUST BE SIGNED IN THE PRESENCE OF A NOTARY PUBLIC OR OTHER OFFICER AUTHORIZED TO ADMINISTER OATHS.

1. This sworn statement is submitted with the Enterprises General Administration Agreement for Fred Fox, Inc., and the Town of Davie.
2. This sworn statement is submitted by Fred Fox Enterprises, Inc. whose business address is 26 Spanish Street, St. Augustine, Florida 32084, and (if applicable) its Federal Employer Identification Number (FEIN) is 59-2443697.
3. My name is Fred D. Fox, and my relationship to the entity named above is President of the Corporation.
4. I understand that a "Public Entity Crime" as defined in Paragraph 287.133(1)(g), Florida Statutes, means a violation of any state or federal law by a person with respect to and directly related to the transactions of business with any public entity or with an agency or political subdivision of any other state of with the United States, including, but not limited to, any bid or contract for goods or services to be provided to any public entity or an agency or political subdivision of any other state or of the United States and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation.
5. I understand that "convicted" or "conviction" as defined in Paragraph 287.133(1)(b), Florida Statutes, means a finding of guilt or a conviction of a public entity crime, with or without adjudication of guilt, in any federal or state trial court of record relating to charges brought by indictment or information after July 1, 1989, as a result of a jury verdict, non-jury trial, or entry of a plea of guilty or nolo contendere.
6. I understand that an "affiliate" as defined in Paragraph 287.133(1)(a), Florida Statutes, means:
  1. A predecessor or successor of a person convicted of a public entity crime; or
  2. An entity under the control of any natural person who is active in the management of the entity and who has been convicted of a public entity crime. The term "affiliate" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in the management of an affiliate. The ownership by one person of shares constituting a controlling interest in another person, or a

pooling of equipment or income among person when not for fair market value under an arm's length agreement, shall be a prima facie case that one person controls another person. A person who knowingly enters into a joint venture with a person who has been convicted of a public entity crime in Florida during the preceding 36 months shall be considered an affiliate.

7. I understand that a "person" as defined in Paragraph 287.133(1)(e), Florida Statutes, means any natural person or entity organized under the laws of any state or of the United States with the legal power to enter into a binding contract and which bids or applies to bid on contracts for the provision of goods or services let by a public entity, or which otherwise transacts or applies to transact business with a public entity. The term "person" includes those officers, directors, executives, partners, shareholders, employees, members, and agents who are active in management of an entity.

8. Based on information and belief, the statement which I have marked below is true in relation to the entity submitting this sworn statement. (Please indicate which statement applies.)

XX Neither the entity submitting this sworn statement, nor any officers, directors, executives, partners, shareholders, employees, members, or agents who are active in management of the entity, nor any affiliate of the entity have been charged with and convicted of a public entity crime subsequent to July, 1, 1989.

       The entity submitting this sworn statement, or one or more of the officers, directors, executives, partners, shareholders, employees, members, or agents who are active in management of the entity, or an affiliate of the entity has been charged with and convicted of a public entity crime subsequent to July 1, 1989, AND (Please indicate which additional statement applies.)

       There has been a proceeding concerning the conviction before a hearing officer of the State of Florida, Division of Administrative Hearings. The final order entered by the hearing officer did not place the person or affiliate on the convicted vendor list. (Please attach a copy of the final order.)

       The person or affiliate was placed on the convicted vendor list. There has been a subsequent proceeding before a hearing officer of the State of Florida, Division of Administrative Hearings. The final order entered by the hearing officer determined that it was in the public interest

to remove the person or affiliate from the convicted vendor list. (Please attach a copy of the final order.)

\_\_\_\_\_ The person or affiliate has not between placed on the convicted vendor list. (Please describe any action taken by or pending with the Department of General Services.)

\_\_\_\_\_  
Fred D. Fox (Signature)

Date: \_\_\_\_\_

STATE OF FLORIDA

COUNTY OF ST. JOHNS

PERSONALLY APPEARED BEFORE ME, the undersigned authority, Fred D. Fox, who, after first being sworn by me, affixed his signature in the space provided above on this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

### **COST SUMMARY FOR NEGOTIATED CONTRACTS**

GRANTEE: Town of Davie

GRANT NUMBER: 09DB-4X-11-16-02-N58

NAME AND ADDRESS: Fred Fox Enterprises, Inc.  
OF CONTRACTOR: 26 Spanish Street  
P. O. Box 1047  
St. Augustine, Florida 32085-1047

DATE OF PROPOSAL: June 15, 2009

TYPE OF SERVICE TO  
BE FURNISHED: CDBG Grant Administration

=====

#### **COST SUMMARY:**

DIRECT LABOR: Estimated hrs x hrly rate = estimated cost

Consultant/Director 225 hrs x \$100. = \$  
22,500.00

Project Manager 225 hrs x \$75. = \$  
16,875.00

Grants Compliance Manager 200 hrs x \$75. = \$  
15,000.00

Grants Compliance Asst/ Review Specialist 125 hrs x \$60. = \$  
7,500.00

Environmental Specialist 50 hrs x \$60. = \$  
3,000.00

Clerical Support 75 hrs x \$40. = \$  
3,000.00

**DIRECT LABOR TOTAL: \$ 67,875.00**

INDIRECT COSTS: Fringes, G & A, etc., rate x base = cost  
Fringes 35% x 67,875.00 = \$ 23,756.25

**INDIRECT COST TOTAL: \$ 23,756.25**

OTHER INDIRECT COST: describe

N/A

**OTHER INDIRECT COST:\$ 0.00**

<b>TOTAL ESTIMATED COST:</b>	<u>\$ 91,631.25</u>
<b>PROFIT:</b>	<u>\$ 6,368.75</u>
<b>TOTAL PRICE:</b>	<u>\$ 98,000.00</u>